

(2013) 02 KAR CK 0081

In the Karnataka High Court

Case No : Writ Petition No's. 16309 and 17574 of 2012 (GM-RES)

Dr. Rajashekar Bhusanurmah and Dr. Patil Devendragouda
Mallikarjunagouda

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Indian Medicine Central Council Act, 1970 — Section 3(1)(a), 4(2)
Karnataka Ayurvedic, Naturopathy, Siddha, Unani and Yoga Practitioners Registration
and Medical Practitioners Miscellaneous Provisions Act, 1961 — Section 2(h)
Indian Medicine Central Council Act, 1970 — Section 3(1)(a), 4(2)

Citation : (2013) 2 AKR 837 : (2013) ILR (Kar) 1150 : (2013) 5 KarLJ 441 :
(2013) 2 KCCR 1557

Hon'ble Judges : Mohan M. Shantanagoudar, J

Bench : Single Bench

Advocate : Padmanabha V. Mahale, for Shivayogimath Associates, for the
Appellant; S. Susheela, AGA for R2 to R4, Sri Kalyan Basavaraj, ASG for R1, Sri
Devadas, for Smt. Anusuyadevi, for R7 and R8 and Sri N.K. Ramesh, for R6, for
the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantanagoudar, J.—The order Annexure-A passed by the Government of India dated 30.3.2012 by which the complaint filed by the petitioner stood rejected is called in question in these writ petitions. The petitioners as well as Respondent Nos. 7 and 8 alongwith others contested in the election for the post of Member to the Central Council of Indian Medicine-2011 ("CCIM-2011" for short), which was held on 13.6.2011 in Karnataka. The Respondent Nos. 7 and 8 were declared as elected in the said election and the petitioners were defeated. The petitioners raised a dispute and the dispute was referred to the Central Government u/s 4(2) of the Indian Medicine Central Council Act, 1970 ("Central Act" for short) and the Central Government has passed the order Annexure-A rejecting the complaint lodged by the petitioners. Hence these writ petitions.

2. Sri Padmanabha V. Mahale, learned senior advocate appearing on behalf of the petitioners submits that the Central Government is not justified in appointing the Enquiry Officer to inquire into the allegations found in the complaint lodged by the petitioner; the Central Government is not justified in simply relying upon the report while coming to the conclusion, that too without application of mind; the Central Government has not applied its mind independently to the facts of the case before coming to the conclusion, but has simply upheld the enquiry report; Respondent Nos. 7 and 8 are not entitled to contest election to the membership of CCIM-2011 in the constituency reserved for practitioners as contemplated u/s 3(1)(a) of the Central Act; Respondent Nos. 7 and 8 are the Professors duly employed and are drawing the salary of the State Government and consequently are not Practitioners; Respondent Nos. 7 and 8 are not entitled to practice inasmuch as they are not from clinical side and they do not have appropriate qualification in clinical side; Respondent Nos. 7 and 8 have not obtained due permission from the State Government while contesting the election. On these among other grounds, he prays for quashing the order Annexure-A.

Sri Devadas, learned senior advocate appearing on behalf of Respondent Nos. 7 and 8 opposes the writ petitions by filing the statement of objections. He submits that Respondent Nos. 7 and 8 are registered Practitioners in Karnataka State and as Principal and Lecturer of Medical Colleges, they regularly practice in the hospitals attached to the medical college; every Lecturer in the college is bound to treat the patients admitted to the hospital wherein Respondent Nos. 7 and 8 are employed; Respondent Nos. 7 and 8 have taken due permission from the State Government/appropriate authority before contesting the election; the Central Government had appointed the Enquiry Officer and has taken enquiry officer's report on record. It cannot be said that the Central Government has not applied its mind on merits inasmuch as the impugned order reveals that the Central Government has considered the enquiry report and the said report covers all the aspects of the complaint filed by the petitioners. On these among other grounds, he prays for dismissal of the writ petitions.

3. Annexure-R1 produced by Respondent No. 7 alongwith the statement of objections clearly reveals that Respondent Nos. 7 and 8 have obtained due permission from the concerned authority for contesting in the election. Such permission was obtained by them on 11.5.2011 itself whereas the elections are conducted on 13.6.2011, which means that the permission is granted in favour of Respondent Nos. 7 and 8 to contest in the election by the appropriate authority.

4. The impugned order Annexure-A reveals that an Inquiry Officer was appointed on 16.2.2012 by the Central Government, who heard the petitioners as well as the respondents alongwith the Returning Officer and submitted his report as per Annexure-B. The said report was considered by the Central Government and having found that the report has covered all the aspects and allegations found in the complaint filed by the petitioners, the Central Government accepted the report and dropped the proceedings.

In the normal course, this Court would have remitted the matter to the Central Government once again to reconsider the matter inasmuch as prima facie it appears that the Central Government has not independently assigned reasons for coming to the conclusion. The conclusion may be justified, but the decision taking authority should also apply its mind and assign the reasons for coming to the conclusion. However having heard both the learned advocates quite a long time, I have gone through all the records. Both the learned advocates submitted before the Court that the matter may be disposed of on merits finally. Therefore this Court has chosen to enter into merits of the case.

5. Before proceeding further, it is relevant to note the provisions of Section 3(1) of the Indian Medicine Central Council Act, 1970 which read thus:

3. Constitution of Central Council:- (1) The Central Government shall, by notification in the Official Gazette, constitute for the purposes of this Act a Central Council consisting of the following members, namely:-

(a) Such number of members not exceeding five as may be determined by the Central Government in accordance with the provisions of the First Schedule for each of the Ayurveda, Siddha, Unani and Sowa-Rigpa systems of medicine from each State in which a State Register of Indian Medicine is maintained, to be elected from amongst themselves by persons enrolled on that Register as Practitioners of Ayurveda, Siddha, Unani or Sowa-Rigpa, as the case may be;

(b) One member for each of the Ayurveda, Siddha, Unani and Sowa-Rigpa systems of medicine from each University to be elected from amongst themselves by the members of the Faculty or Department (by whatever name called) of the respective system of medicine of that University;

(c) Such member of members, not exceeding, thirty percent, of the total number of members elected under clauses (a) and (b), as may be nominated by the Central Government, from amongst persons having special knowledge or practical experience in respect of Indian medicine;

Provided that until members are elected under clause (a) or clause (b) in accordance with the provisions of this Act and the rules made thereunder, the Central Government shall nominate such number of members, being persons qualified to be chosen as such under the said clause (a) or clause (b), as the case may be, as that Government thinks fit; and references to elected members in this Act shall be construed as including references to members so nominated.

From the above, it is clear that the members can be elected from three categories. (a) From the persons enrolled in the register as Practitioners of Ayurveda, Siddha, Unani or Sowra-Rigpal etc., (b) from among the members of Faculty or Department of the respective system of medicine of the University ; (c) the Government nominees.

6. We are concerned with the elections from out of the category of persons who are enrolled as Practitioners in the register. In other words, the present matter is

concerned with interpretation of Section 3(1)(a) of the Central act coupled with the other provisions. If the aforementioned provision of Section 3(1)(a) of the Central Act is read meticulously, it makes clear that the persons who are enrolled as Practitioners in State Register of Indian Medicine are entitled to contest the election as the Practitioners. Undisputedly, the petitioners as well as Respondent Nos. 7 and 8 have contested the elections from that area only. The words, "Practitioners" and "registered Practitioners" are not defined under the Central Act. However, Section 3(1)(a) of the Central Act states that the persons who are enrolled as members in the State Register of Indian Medicine maintained by each State are the Practitioners and are entitled to practice.

7. The word, "Practitioner" is defined under Section-2(h) of the Karnataka Ayurvedic, Naturopathy, Siddha, Unani and Yoga Practitioners" Registration and Medical Practitioners" Miscellaneous Provisions Act, 1961 ("State Act" for short) which reads thus:

"Practitioner" means a person who practices any system of medicine as his principal occupation.

So also "registered Practitioner" is defined u/s 2(m) of the State Act, which reads thus:

"Registered Practitioner" means a practitioner whose name is for the time being entered in the register under this Act."

The State Act makes difference between the "Practitioner" and the "registered Practitioner". Practitioner means a person who practices any system of medicine as his principal occupation, which means if the person's principal occupation is practising the system of medicine, then he is a Practitioner. However, the registered Practitioner means a Practitioner whose name for the time being is entered in the register maintained under the State Act. Thus to qualify to become a registered Practitioner, the medical practice need not be a principal occupation. However, any Practitioner of Medicine can register himself under the State Act as a registered Practitioner. It is not in dispute that Respondent Nos. 7 and 8 have registered their names as registered Practitioners and their names do find place in the Karnataka State Medical Practitioners Register maintained under the State Act. Thus Respondent Nos. 7 and 8 being registered Practitioners, are entitled to contest the election u/s 3(1)(a) of the Central Act. If the proviso to Section 3(1)(a) of the Central Act is read homogeneously with the definition of the registered Practitioner found in the State Act, it is amply clear that Respondent Nos. 7 and 8 being registered Practitioners are entitled to contest the election.

Moreover the Court can take judicial notice of the fact that the Principals and lecturers of the Medical Colleges are all medical Practitioners. They are bound to take care of the patients admitted to the hospital. Some other doctors may also visit the hospital, but the principal duty of the Lecturers like the Practitioners working in the medical colleges is to oversee the working in the hospitals also.

They have to naturally attend the Out Patient Department and other sections. Therefore it cannot be said that the Principal of the Medical College or Lecturer/ Professor of a Medical College is not a Medical Practitioner.

Be that as it may, in addition to the same, as aforementioned, Respondent Nos. 7 and 8 being the registered Practitioners and as they are attached to the Teaching Hospitals as doctors, they squarely fall within the definition of "registered Practitioner" as defined u/s 2(h) of the State Act. Consequently, they are entitled to contest the election. In view of the same, this Court does not find any reason to interfere in the conclusion reached by the Central Government. Hence no interference is called for.

Petitions fail and the same stand dismissed.